DEPARTMENT OF STATE REVENUE

01-20170900.LOF

Letter of Findings: 01-20170900
Indiana Individual Income Tax
For The Tax Year 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was liable for additional Indiana income tax for the 2013 year because he had income from Indiana in 2013 and was required to file his Indiana income tax return reporting a portion of income to Indiana.

ISSUE

I. Indiana Individual Income Tax - Non-filer - Indiana Source Income.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Goosen v. Comm'r*, 136 T.C. 547 (Tax Ct. 2011); *Garcia v. Comm'r*, 140 T.C. 141 (Tax Ct. 2013); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc*., 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the Department's assessment of individual income tax for 2013.

STATEMENT OF FACTS

Taxpayer is a professional golfer who currently resides in Texas. Taxpayer regularly participates in golf tournaments, such as the PGA Tour, the Web.com Tour, and similar events, in various states throughout the United States ("U.S."). Taxpayer often enters into endorsement agreements with sponsors who manufacture sporting products.

In 2017, the Indiana Department of Revenue ("Department") determined that for the 2013 year, Taxpayer had income attributable to Indiana. The Department also found that Taxpayer did not file his Indiana income tax return reporting his Indiana income tax. The Department assessed Taxpayer income tax for that year based on the best information available to the Department. The Department also imposed penalty and interest.

Taxpayer timely protested the assessment. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessments. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Non-filer - Indiana Source Income.

DISCUSSION

Based on the best information available to the Department, the Department determined that Taxpayer was required to file the 2103 Indiana income tax return reporting income attributable to Indiana. Taxpayer disagreed, arguing that he was not an Indiana resident and his income from an endorsement contract was not subject to Indiana income tax. The issue thus is whether Taxpayer demonstrated that he was not required to file Indiana return because he was not an Indiana resident and/or his income was not subject to Indiana income tax.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue,* 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc*., 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus,

the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax and provides, as follows:

> With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:
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> (1) income from real or tangible personal property located in this state;
> (2) income from doing business in this state;
> (3) income from a trade or profession conducted in this state;
> (4) compensation for labor or services rendered within this state; and
> (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

For Indiana income tax purposes, the presumption is that a resident/taxpayer files his or her federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the resident/taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

In this instance, upon review, the Department is prepared to agree that Taxpayer's supporting documentation demonstrated that he was not an Indiana resident for 2013. The issue becomes, as a nonresident, whether Taxpayer's 2013 income was subject to Indiana income tax because Taxpayer's income was derived from an Indiana source. According to IC § 6-3-2-2(a), a nonresident professional golfer's income is subject to Indiana income tax when his income is (1) attributable to playing golf tournaments or similar events in Indiana under (a)(3); (2) attributable to performing services in Indiana under (a)(4); or (3) attributable to "good will, trademarks, trade brands . . . and other intangible personal property to the extent that the income is apportioned to Indiana . . . ." under (a)(5).

Taxpayer here argued that he was not required to file a 2013 Indiana income tax return and did not owe any Indiana income tax because he did not have Indiana source income. Taxpayer claimed that, in 2013, he only spent several days playing golf in an event in Indiana and lost. Taxpayer stated that when he did not win, he was required to cover his own expenses, including travel and lodging; in turn, he incurred losses. Additionally, Taxpayer maintained that although he received payments from an endorsement agreement, which listed his agent's business address in Indiana as his address, Taxpayer contended that the payments were not Indiana source income. Taxpayer maintained that it was the sports industry standard practice to use the agent's business address as the professional golfer's address. To support his protest, Taxpayer offered additional supporting documentation including, his 2013 federal income tax return, the letter from Taxpayer's agent, the endorsement agreement, credit card statements, receipts for hotel and rental car.

Upon review, however, Taxpayer is mistaken. Specifically, Taxpayer in this instance has been a professional golfer and income (or loss) from playing golf tournaments or similar events in Indiana is "income from a trade or profession conducted in this state." IC § 6-3-2-2(a)(3). Therefore, regardless of winning or losing, Taxpayer was required to file an Indiana return to report the income (or loss) from playing the golf tournaments in Indiana pursuant to IC § 6-3-2-2(a)(3).

Regarding Taxpayer's income from the endorsement agreement, as mentioned earlier, Indiana tax law often refers to the federal tax law and principles. The federal tax courts have addressed similar issues of income tax on nonresident professional golfers' income from endorsement agreements. In *Goosen v. Comm'r*, the federal tax court was asked to address income tax issues of a professional golfer's income from worldwide endorsement agreements. *Goosen v. Comm'r*, 136 T.C. 547 (Tax Ct. 2011). The Internal Revenue Service ("IRS") assessed Mr. Retief Goosen, a non-domiciliary United Kingdom (U.K.) resident, additional income tax for 2002 and 2003

concerning income that stemmed from several sponsors' endorsement agreements. They were "Acushnet, TaylorMade, Izod, Upper Deck, Electronic Arts and Rolex." *Id*. Mr. Retief Goosen and the IRS disputed the characterization of the income as well as how the income was allocated. *Id*. at 549 - 57.

The *Goosen* court addressed the issues using a contract-by-contract approach. Among three (3) endorsement agreements (namely, Acushnet, TaylorMade, and Izod), Mr. Goosen was required to fulfill certain obligations. *Id*. For example, to receive annual base remuneration, Mr. Goosen was required to use certain products - "head to toe" - made by the manufacturers when he played, to promote the products, to attend certain events, and to exercise his best effort to play and perform in these golf tournaments, including the PGA Tour. *Id*. Also, Mr. Goosen was to receive bonuses if he achieved specific finish and certain ranking. *Id*. The manufacturers had the right to Mr. Goosen's identity, including name, face, likeness, image, and voice. *Id*. The court in *Goosen* determined that under the above-mentioned three (3) endorsement agreements, Mr. Goosen received both royalty income and income for rendering personal services. *Id*. at 559 - 63. Considering specific facts and circumstances, the court further estimated that Mr. Goosen received 50 percent royalty income and 50 percent personal services income from three manufacturers' endorsement agreements. *Id*. at 559 - 63. As to the remaining endorsement agreements, the court determined that Mr. Goosen received royalty income which the majority of which was U.S.-source income not effectively connected with U.S. trade or business. *Id*. at 563 - 67.

Two years later, in 2013, the federal tax court in *Garcia v. Comm'r* was asked again to address a similar issue - income tax deficiencies arising from income Mr. Sergio Garcia (a professional golfer who was a citizen of Spain and resident of Switzerland) received pursuant to his endorsement agreement with TaylorMade, the golf gear manufacturer. *Garcia v. Comm'r*, 140 T.C. 141 (Tax Ct. 2013). The *Garcia* court acknowledged the income at issue Mr. Garcia received consisted of both royalty income and personal services income. *Id*. However, the *Garcia* court distinguished from the "50-50 percent" allocation approach in *Goosen*. The court determined that considering Mr. Garcia's outstanding status, 65 percent was royalty income and 35 percent was personal services income. The *Garcia* court explained, in relevant part:

> The characterization of * * * [a taxpayer's] endorsement fees and bonuses depends on whether the sponsors primarily paid for * * * [the taxpayer's] services, for the use of * * * [the taxpayer's] name and likeness, or for both. We must divine the intent of the sponsors and of * * * [the taxpayer] from the entire record, including the terms of the specific endorsement agreement. . . . *Id*. at 153.

Similar to the professional golfers in *Goosen* and *Garcia*, Taxpayer here is also a professional golfer who entered into an endorsement agreement with a golf gear manufacturer. Taxpayer's documentation demonstrated that Taxpayer was required to (1) use his best efforts to promote, among other things, sponsor's products; (2) compete in a certain number of tournaments; and (3) be available for several days for the purpose of participating in media-related advertising activities and other activities to promote and market sponsor's products. Also, similar to the professional golfers in *Goosen* and *Garcia*, Taxpayer's documentation demonstrated that the sponsor had the exclusive right and licenses to use Taxpayer's "name, nickname, voice, likeness, initials, and facsimile signature, and any trademark registrations . . . with prior approval . . . in connection with the manufacture, sale, distribution, marketing, promotion, and advertising of" the sponsor's products. Therefore, Taxpayer's income from the endorsement agreement was subject to Indiana income tax pursuant to IC § 6-3-2-2(a)(4) and (5). Nonetheless, the Department is not required to allocate the percentage income as to royalty income or personal services income because either income source is taxed the same rate in Indiana for Indiana income tax purposes. Taxpayer's documentation showed that to fulfill his obligations under the endorsement agreement at issue, Taxpayer played both within and without Indiana. As such, Taxpayer was required to apportion his income - annual base remuneration and bonuses - from the endorsement agreement. Taxpayer's documentation further demonstrated that in 2013 he spent a total 192 days attending golf tournaments or similar events and among these days, Taxpayer spent 6 days in Indiana. Thus, Taxpayer was required to file his Indiana income tax return reporting a portion of - three (3) percent - that income to Indiana.

In short, given the totality of the circumstances, Taxpayer had income from Indiana in 2013 and was required to file his Indiana income tax return reporting apportion of income to Indiana.

FINDING

Taxpayer's protest is respectfully denied.

March 28, 2018

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An html version of this document.